IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

CRL.REF.No. 5 of 2005()

SC.183/2003 of II ADDL. DISTRICT COURT, PALAKKAD

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: APPELLANT/ACCUSED:

CRL. REF. BY DISTRICT JUDGE, PALAKKAD.

BY ADV. ADV.K.P.HARISH(STATE BRIEF)

RESPONDENTS:

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

Crl.Ref.No.5 of 2005

Dated this the 29th day of May, 2007

ORDER

This Criminal Reference has been registered on the basis of a letter of reference submitted by the Sessions Judge, Palakkad.

2. It would be appropriate to refer to the skeletal fact. After investigation, there was allegation that an offence under Section 57(a) of the Kerala Abkari Act was committed by the accused. The learned Magistrate committed the case to the Court of Session. The learned Sessions Judge made over the case to the Assistant Sessions Court for disposal. The learned Assistant Sessions Judge had framed charges. It was thereafter withdrawn and made over to the Additional Sessions Court. By then, the report of the Chemical Examiner had been received and it was seen that the contraband article contained diazepam, a psychotropic substance. Therefore fresh charges are to be framed and the case had to proceed for the offence punishable under the N.D.P.S Act.

3. When the matter came up before the Additional Sessions Judge, the learned Additional Sessions Judge appeared to have felt that he is not competent to proceed with the case including the allegation under the N.D.P.S Act. Obviously the confusion of thought appears to have arisen because the committal was done at a stage when the allegation under the N.D.P.S Act was not raised and did not arise.

4. When the reference was received, notice was issued. There was no one to represent the accused. An advocate was appointed as State Brief Counsel to assist the Court. Arguments have been heard.

5. There has been no infraction of the provisions of Section 193 Cr.P.C in as much as there has been a proper order of committal. The decision in **Gangula Ashok v. State of A.P** [2000(1) KLT 609 (S.C)] has therefore no application at all. This is not a case where cognizance has been taken by the Court of Session ignoring or violating the mandate of Section 193 Cr.P.C. Committal was proper. Cognizance taken was also proper.

6. But when the report of the Chemical Examiner was received, it became necessary to include a charge under the N.D.P.S Act also. The matter was pending before the Additional Sessions Court and there is not submission before me that the Additional Sessions Court was not competent to try the offence punishable under the N.D.P.S Act. In these circumstances, all that deserved to be done was to amend the charge as permitted by the Code to include the allegation under the N.D.P.S Act also. Instead of that a reference has been made unnecessarily to this Court. The learned Sessions Judge now reports that it was an error and he had only forwarded the letter from the Additional Sessions Judge.

7. In these circumstances, I answer the reference holding that the Special (Sessions) Court under the N.D.P.S Act is perfectly competent to proceed with the case. The learned Sessions Judge, Palakkad has been notified as the Special Judge for N.D.P.S Act cases and therefore trial can be held before the Principal Sessions Judge, Palakkad. In view of the long unnecessary pendency of this proceedings, I am satisfied that directions must be issued to the learned Principal Sessions Judge himself to dispose of the matter as expeditiously as possible after amending the charges appropriately.

8. Send the records back to the learned Sessions Judge. The learned Sessions Judge shall dispose of the case as expeditiously as possible, at any rate - within a period of 4 months from the date on which this order is placed before the learned Sessions Judge.

(R.BASANT, JUDGE)

rtr/-